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No. _____

IN THE
Supreme Court of the United States

ALVIN L. KENDALL,
Pro Se Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent,

v.

ONE 1989 MERCEDES BENZ 260E, VIN WDBEA26DXKA951990
and
ONE 1961 JAGUAR MK2, VIN P212601BW,
Defendants.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

---

PETITION FOR WRIT OF CERTIORARI

Alvin L. Kendall
Reg. No. 48526-019
Pro Se Petitioner
Coleman Low
P.O. Box 1029
Coleman, FL 33521

83 pp

QUESTIONS PRESENTED

1. Did the Civil Asset Forfeiture Reform Act of 2000 (CAFRA) apply to cases on direct appeal on the act's effective date such as the instant case.

2. Whether the doctrine of claim preclusion applies to successive *in rem* and *in personam* forfeiture actions.

3. The government's lack of probable cause prior to the seizure of the defendant automobiles rendered the forfeiture void pursuant to the Fifth Amendment of the Federal Constitution.

PARTIES TO THE PROCEEDING

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PETITION FOR WRIT OF CERTIORARI

Petitioner Alvin L. Kendall respectfully prays that a Writ of Certiorari issue to review the Judgment of the United States Court of Appeals for the Eleventh Circuit entered in this proceeding on February 4, 2002.

CITATIONS TO OPINIONS BELOW

The judgment of the Eleventh Circuit Court of Appeals was without Opinion. (Appendix 1a).

JURISDICTION

The Court of Appeals entered its judgment on February 4, 2002. Its Order denying Kendall's Petition for Rehearing was issued on May 8, 2002. (Appendix 3a)

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1254 (1).

STATEMENT OF THE CASE

On November 19, 1996, a federal grand jury indicted Sam Carroll and others in a multi-count indictment charging Carroll with various drug crimes. The indictment was returned and sealed. The indictment was unsealed on January 28, 1997 and Carroll was arrested on January 29, 1997. Federal agents seized from Carroll's wife, Joan Carroll, a 1989 Mercedes Benz 260E (hereinafter referred to as "Defendant Mercedes"). Federal agents also served a seizure warrant on Alvin L. Kendall's residence and seized a 1961 MK2 Jaguar (hereinafter referred to as "Defendant Jaguar") on January 29, 1997.

Carroll was detained on the Government's motion after his arrest because the government contended that he was a danger to the community and he was facing a 10 year or more sentence and no condition of bond would protect the public and assure his appearance. On February 13, 1997, Carroll entered a plea of guilty to one count of conspiracy to distribute powder cocaine and was found guilty by the district court of this offense. A part of Carroll's plea agreement was for Carroll to cooperate with the government in their investigation and prosecution of Kendall. On February 14, 1997, the government agreed to a bond for Carroll in violation of 18 U.S.C. §3143(a)(2). Carroll was released on bond from February 14, 1997 to September 3, 1998, the date of his sentencing.

On September 3, 1997, Kendall was indicted on a four-count indictment, along with Drug Enforcement Administration (DEA) Special Agent Regina Bledsoe, charging them both with conspiracy to violate 18 U.S.C. §2232(b) (Count I); violation of 18 U.S.C.§2232(b) (Count

II); and conspiracy to distribute cocaine in violation of 21 U.S.C. §§846 and 841 (Count III); and a forfeiture count with unspecified property (Count IV). On March 13, 1998, Kendall was acquitted on Count II and found guilty on Counts I and III. Kendall's sole co-conspirator was acquitted on all three counts.

The government failed to present any evidence on the criminal forfeiture count. Kendall filed a Motion for Judgment of Acquittal on the forfeiture count in the criminal indictment on September 25, 1998. The government contested the Motion for Judgment of Acquittal in their response to this motion on October 16, 1998. The government on December 3, 1998 filed a Motion for Leave to File Dismissal on the forfeiture count in the criminal indictment. The district court in the criminal case granted the government's motion to dismiss the criminal forfeiture count on December 3, 1998.

Kendall was sentenced on December 3, 1998. At Kendall's sentencing, the district court found that Kendall was responsible for zero (0) quantity of cocaine in his Count III conviction for conspiracy to distribute cocaine.

By letter dated March 28, 1997, DEA mailed Kendall two Notices of Seizure for Defendant Mercedes and Defendant Jaguar. On April 29, 1997, Kendall filed with DEA his claim of ownership and cost bond of $1,000 on the Defendant Mercedes and $1,200 on the Defendant Jaguar. On June 26, 1997, the government filed their Complaint for Forfeiture and Plaintiff's Answers to Mandatory Interrogatories. On June 26, 1997, the clerk of court issued a Warrant of Arrest of Property and Notice for each Defendant. The Notices

were never published in a newspaper of general circulation. The U.S. Marshal executed the Warrant of Arrest of Property and Notice on the Defendant vehicles on July 8, 1997. On August 25, 1997, Kendall filed his Claim, Answer and Motion to Dismiss the Complaint for Forfeiture pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. The district court denied Kendall's Motion to Dismiss on March 24, 1998.

On September 11, 1997, the government and Kendall filed a Joint Motion for Stay of Proceedings and the district court granted the Motion of September 25, 1997 pending the criminal trial of Kendall.

On March 23, 1998, nine months after filing the Complaint for Forfeiture, the government filed a Filing of Public Notice as required by Rule C(4) of the Supplemental Rules for Certain Admiralty and Maritime Claims. On March 24, 1998, the government filed an Amended Filing of Public Notice. On March 30, April 6, and April 13, 1998, the Amended Public Notice was published in the Atlanta Journal-Constitution newspaper.

The government filed a Motion for Summary Judgment as to both Defendants on November 13, 1998. Kendall responded to the government's motion with accompanying Affidavit of Kendall and exhibits. The district court granted the government's motion for summary judgment as to Defendant Jaguar and denied the government's motion for summary judgment as to Defendant Mercedes on August 3, 1999. The district court held that the testimony of Sam Carroll that he restored the Defendant Jaguar with drug proceeds was sufficient to prove probable cause that the Defendant Jaguar was tainted by the proceeds of the exchange of

illegal drugs. The district court denied the government's motion on Defendant Mercedes on the grounds that a genuine issue of material fact existed as to Kendall's standing.

The government filed a Motion for Interlocutory Sale of the Defendants on August 5, 1998 on the basis that the cost of the storage of the vehicles was eroding the value of the vehicles. On August 18, 1998, Kendall filed his response to the government's Motion for Interlocutory Sale showing the district court the uniqueness of the Defendants and that the Defendants should not be sold. The district court granted the government's motion without entering a separate written order on March 29, 1999.

The government, without notice to Kendall, sold the Defendants on May 13, 1999 for $5,800 (Defendant Mercedes) and $7,000 (Defendant Jaguar).

This case was tried to a jury on January 24, 2000 as to Defendant Mercedes. The jury returned a special verdict on January 26, 2000 finding that Kendall was not the owner of Defendant Mercedes. (Appendix 8a) The district court clerk entered an order and judgment of forfeiture as to Defendant Mercedes on February 10, 2000. (Appendix 6a) The district court clerk entered a judgment against the Defendant Jaguar on March 7, 2000. (Appendix 5a) Kendall filed a Notice of Appeal to the 11th Circuit Court of Appeals on April 4, 2000. Oral argument was heard on January 29, 2002. The district court was affirmed without a written opinion on February 4, 2002. (Appendix 1a) Kendall's petition for rehearing and suggestion for rehearing en banc was denied on March 8, 2002. (Appendix 3a)

REASONS FOR GRANTING THE WRIT

1. Did the Civil Asset Forfeiture Reform Act of 2000 apply to cases on direct appeal on its effective date such as the instant case.

On April 25, 2000, Congress passed the Civil Asset Forfeiture Reform Act of 2000 (CAFRA). The legislation's effective date was 120 days from April 25, 2000, which was August 23, 2000. Congress specifically stated that the new statute is "applicable to any forfeiture proceeding commenced on or after the date that is 120 days after April 25, 2000." The issue is two fold: (1) what is the definition of "commenced" as used in the statute and (2) should the new legislation be applied to pending cases on direct appeal.

The federal circuit courts of appeals and district courts are split on these issues. The 6th Circuit Court of Appeals held in United States v. Real Property in Section 9, Town 29 North, 241 F.3d 796 (2001) rehearing denied, 2001 U.S. App. Lexis, 14119 (June 8, 2001) that the CAFRA applied to cases pending on direct appeal at the time of enactment of the statute. The 6th Circuit stated:

> Generally, when a statute is addressed to remedies or procedures and does not alter substantive rights, will be applied to pending cases. [Citing Landgraf v. USI Film Products, 511 U.S. 244, 275, 114 S. Ct. 1483(1984). . .
>
> The dangers that the rule against retrospective application of statutes guards against are not generally present when the

> new legislation is remedial in nature and is designed to rectify an unfairness to an individual vis-a-vis the government.

The district court in the Western District of Tennessee in the case of United States v. Property at 2526 Faxon Ave., Memphis, Tenn.,145 F. Supp. 2d 942, 951 (2001) agreed with the 6th Circuit and stated:

> While the Civil Asset Forfeiture Reform Act of 2000 provides, in Section 21 thereof, that it "shall apply to any forfeiture proceeding commenced after the date of the enactment" thereof (the enactment date being April 25, 2000), and the civil complaint herein was filed on July 9, 1999, it is clear that the Act applies in full force (as regards the respective burdens of proof) to this case.

The 10th Circuit Court of Appeals has an intra-circuit conflict as to whether the CAFRA of 2000 applies to a case on direct appeal at the time of its enactment. The 10th Circuit stated in United States v. Lot Numbered One (l) of Lavaland Annex, 256 F. 3d 949, 956-957 (2001):

> On April 25, 2000 (after the district court filed its opinion), Congress passed the Civil Asset Forfeiture Reform Act of 2000 . . . This circuit has considered the question of whether to apply the 2000 Act to a case filed before its effective date. In United States v. $30,006.25, 236 F.3d 610, 615(10th Cir. 2000), we stated that it did not apply to a proceeding commenced before its effective date but pending on appeal after that date. . .

> However, in contrast to the instant case, the court in $30,006.25 did not conclude that the case should be remanded for a new trial. Thus, the parties there could not argue, as one might here, that it is the date of the commencement of the new trial that determines which statutory provision should be applied.
>
> In light of that distinction, as well as the fact that the issue of whether the 2000 Act should be applied has not been briefed by the parties, we will leave it to the district court to determine on remand whether the adjudication of RMI's innocent owner defense should proceed under the version of §881(a)(7) in effect at the time of the initial trial or under the provisions of the 2000 Act.

The 11th Circuit in United States v. Carrell, 252 F.3d 1193, n.10 (2001) held that the CAFRA of 2000 does not apply to cases filed before the Act's enactment date as it did in the instant case.

The 1st Circuit Court of Appeals has held that:

> Congress recently amended the forfeiture statute through the Civil Asset Forfeiture Reform Act of 2000. . . However, the newly amended innocent owner defense applies only to those forfeitures proceedings "commenced on or after [April 25, 2000]. . . The forfeiture proceeding here was commenced on February 3, 1998, and so the amended innocent owner defense does not apply to this case. United States v. Real

Property located at 221 Dana Ave., 239 F.3d 78 (2001).

The Federal Circuit Court of Appeals has held that:

> On April 11, 2000 Congress passed the Civil Asset Forfeiture Reform Act of 2000 (CAFRA)(cite omitted) in an effort to address due process concerns associated with federal civil forfeitures. . .
>
> CAFRA is not applicable to this case, as it was not enacted by signature until April 25, 2000, and by its terms, CAFRA only applies to "any forfeiture proceeding commenced on or after the date that is 120 days after the date of the enactment of this Act." (cite omitted) The commencement of forfeiture proceedings in this case occurred in 1993. Vereda LTDA v. United States, 271 F. 3d 1367, 1371 (2001).

As cited above, the 6th Circuit Court of Appeals used this Court's opinion in Landgraf v. USI Film Products to hold that the CAFRA of 2000 applied to cases on direct appeal at the time of the enactment of the Act. The district court in the Central Division of California construed the Landgraf case to reach the exact opposite results. The district court stated in regards to the CAFRA of 2000 the following:

> When a case implicates a federal statute enacted after the events in suit, the court's first task is to determine whether Congress has expressly prescribed the statute's proper reach. If Congress has done so, . . . there is

> no need to resort to judicial default rules. Landgraf, 511 U.S. 244, 280, 114 S. Ct. 1483, 128 L. Ed. 2d 229 (1994).
>
> In the case at bar, Congress explicitly states that the Act applies to forfeiture proceedings commenced on or after August 23, 2000. The Court need go no further than this express language to determine that the Act does not apply to the instant matter because the government filed its Complaint of August 22, 2000. "A civil action is commenced by filing a complaint with the court." Fed. R. Civ. P. 3 (emphasis added). Accordingly, the Court applies the procedural framework set forth above. U.S. v. $1.00, 348.00 U.S. Currency, 157 F.Supp 110, 1116 (C.D. Cal. 2001)

This Court should address this issue given the fact that there is intra-circuit conflicts, inter-circuit conflict and conflict of interpretation of this Court's reasoning in Landgraf v. USI Film Product.

The application of the CAFRA to the instant case would require a new trial as to the Defendant Mercedes and a reversal of the district court's summary judgment order as to the Defendant Jaguar because the court and the jury did not use the new burden of proof (by a preponderance of the evidence) as to whether the Defendants were purchased with the proceeds traceable to the sale of controlled substances within the meaning of 21 U.S.C. §881(a)(6).

The issue of retroactivity of statutes and case law has been the subject of much litigation in the recent

past. The retroactive effect of Apprendi v. New Jersey, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000); the retroactive effect of the Child Citizenship Act of 2000, 8 U.S.C. §1431 [see United States v. Arbelo, 288 F.3d 1262, 1263 (11th Cir. 2002), Nehme v. INS, 252 F.3d 415, 430-432 (5th Cir. 2001), and Hughes v. Ashcroft, 255 F. 3d 752, 758-760 (9th Cir. 2001)] and the retroactive effect of the Civil Asset Forfeiture Reform Act of 2000 has given courts much litigation and conflicting applications. This issue is ripe for adjudication by this Court.

2. The doctrine of claim preclusion applies to successive in-rem and in-personam forfeiture actions.

The grand jury returned a criminal indictment against Petitioner on September 3, 1997, which included a forfeiture count. Prior to the government bringing the forfeiture action in the indictment the government filed the instant action on June 26, 1997. The criminal forfeiture was an in-personam action and the instant action is an in-rem action. The criminal forfeiture was filed successive to the instant action, but an order to stay the instant action was issued by the district court on September 19, 1997, to allow the criminal case to be tried pursuant to 21 U.S.C.§881(i).

The criminal forfeiture was brought pursuant to 21 U.S.C. §853. The trial of the criminal case was held from February 24, 1998 to March 13, 1998. The criminal forfeiture was bifurcated from the other three counts of the indictment as is the common practice in the Northern District of Georgia. After the jury verdict on the first three counts in the indictment, the government failed to present any evidence on the forfeiture count.

The jury was dismissed by the district court on March 13, 1998. On September 25, 1998, Petitioner filed a Motion for Judgment of Acquittal Pursuant to Rule 29 of the Federal Rules of Criminal Procedure on the forfeiture count in the indictment. The government filed a response contending that a Rule 29 motion was not appropriate because the government had not presented any evidence on the issue of forfeiture, therefore the court did not have a case before it to grant a judgment of acquittal. The district court entered judgment in the criminal case on December 7, 1998. The government rethought their position on the forfeiture count and on December 3, 1998, the government filed a Motion for Leave to File a Dismissal of the Forfeiture Count. The district court granted this motion on December 3, 1998. In the government's motion to dismiss the forfeiture count, the government identified the Defendant Jaguar and Defendant Mercedes as the only two forfeitable assets that the government failed to pursue in the criminal forfeiture case.

This Court exhaustively addressed the issue of whether successive *in-rem* and *in-personam* forfeiture actions violate the Double Jeopardy Clause in United States v. Ursery, 518 U.S. 267, 116 S. Ct. 2135, 135 L. Ed. 2d 549 (1996). Ursery did not answer whether the doctrine of claim preclusion applies to successive *in rem* and *in personam* forfeiture actions. The doctrine of claim preclusion, which is a companion principle of *res judicata*, states that a "final judgment on the merits of an action precludes the parties or their privies from re-litigating issues that were or could have been raised in that action. (Emphasis added) Allan v. McCurry, 449 U.S. 90, 94, 101 S. Ct. 441, 66 L. E. 2d 308, 313 (1980). The government frequently uses the parallel criminal and civil forfeiture laws simultaneously against Defendants

as in the instant case. In Ursery, this Court determined that this was permissible but, Ursery in no way altered the doctrine of claim preclusion. In some criminal forfeiture actions, all of the entities or individuals with an interest in the *res* may not be a charged party in the indictment. A parallel civil forfeiture protects these other entities and individuals from not having a forum to address their interest. On the contrary, in some criminal forfeitures, all of the entities and individuals with an interest in the *res* are defendants in the indictment. Therefore, the doctrine of claim preclusion would be applicable to these cases. The 11th Circuit's affirmance of the district court in the instant case disagrees.

The 2nd Circuit Court of Appeals has long held that the *in rem / in personam* distinction does not prevent claim preclusion. "Disputes arise between human beings, not inanimate things, and therefore, claim preclusion can apply to successive in-rem and in-personam suits." Burns Bros. v. Central Railroad, 202 F. 2d 910 (1953) [Accord in United States v. Banco Internacional/Bital S.A., 110 F. Supp. 2d 1272 (C.D. Cal. 2000)].

This Court has never addressed the doctrine of claim preclusion in successive *in-rem/in personam* forfeiture actions. This Court has addressed in the context of forfeitures, the Federal Constitutions Eighth Amendment Clause prohibiting excessive fines, United States v. Bajahajian, 524 U.S. 321, 141 L. E. 2d 314, 118 S. Ct. 2028 (1998), Alexander v. United States., 509 U.S. 544, 125 L. Ed. 2d 441, 113 S. Ct. 2766 (1993), and Austin v. United States, 509 U.S. 602, 113 S. Ct. 2801, 125 L. Ed. 2d 488 (1993); whether a forfeiture action is collaterally estopped or barred by the Double Jeopardy clause of the Federal Constitution's Fifth Amendment

when the owner is acquitted of the underlying offense, One Lot Emerald Cut Stones and One Ring v. United States, 409 U.S. 232, 34 L. Ed. 2d 438, 93 S. Ct. 489 (1972); and the permissive use of simultaneous in-rem/in-personam actions. Ursery.

This Court is urged to address this issue to alleviate the conflicts in the application of the doctrine of claim preclusion in the federal district and appellate courts. Within the 11th Circuit, the Middle District of Alabama District Court held in United States v. Two Parcels, Real Property, Chilton Co. Ala., 80 F. Supp. 2d 1298, 1304 (2000) "that the district court's dismissal of the forfeiture count pursuant to a plea agreement in the criminal case did not necessarily preclude the initiation of a civil-forfeiture proceeding."

The 2nd Circuit allowed a civil forfeiture action after an acquittal on the merits of the criminal forfeiture action. United States v. Dunn, 802 F.2d 646 (1986).

The 8th Circuit Court of Appeals in United States v. Maull, 855 F.2d 414 (1988) held that a dismissal of a civil forfeiture action brought pursuant to 21 U.S.C. §881 did not bar a later criminal forfeiture proceeding brought under 21 U.S.C. §§848, 853.A dissenting opinion in Maull, distinguished United States v. Dunn and contended that the doctrine of *res judicata* precluded the later criminal forfeiture action.

The 1st and 10th Circuit Court's of Appeals disagree with the 11th, 8th and 2nd Circuits Court's of Appeals. In United States v. Cunan, 156 F 3d 110 (lst Cir. 1998) the court held that a civil forfeiture action that was dismissed with prejudice barred a later criminal forfeiture of the same *res*.

The 10th Circuit Court of Appeals revisited the issues in United States v. Maull in United States v. Lots 43 through 46, 935 F. 2d 1134 (1991) because the government had filed a criminal indictment and forfeiture in the Eastern District of Missouri (8th Circuit) after a Colorado District Court (10th Circuit) had dismissed a civil forfeiture against the same property. The 10th Circuit held that it agreed with the dissenting opinion of the 8th Circuit in United States v. Maull (cited above) but would defer to the majority's holding in the 8th Circuit only because the 8th Circuit had ruled on this issue prior to the case coming before the 10th Circuit. The 8th Circuit and the 10th Circuit Court's of Appeals differed on the application of the doctrine of claim preclusion on the same case.

The conflicts amongst the U.S. District Courts and U.S. Circuit Court's of Appeal compels this issue as ripe for the Court to accept.

3. The government's lack of probable cause prior to the seizure of the Defendant automobiles rendered the forfeiture void, pursuant to the 5th Amendment of the Federal Constitution.

Title 19 U.S.C. §1615 states the burden of proof in forfeiture actions. Section 1615 provides that the claimant shall bear the burden of proof in all forfeiture proceedings, "Provided, that probable cause shall be first shown for the institution of such suit or action, to be judge of by the court. . ." Petitioner has argued below that the specific evidence used by the government to prove probable cause to institute this forfeiture action

was evidence acquired after the seizure of the Defendant Jaguar and Defendant Mercedes. The evidence used on the government's Motion for Summary Judgment of Defendant Jaguar and at the trial of Defendant Mercedes was all acquired after the January 1997 seizure of both Defendants and the June 1997 filing of the Complaint for Forfeiture. The circuit courts of appeals are split as to whether the government may satisfy their §1615 probable cause burden for the commencement of forfeiture actions by 1) only evidence known to the government at the time of the seizure of the property; or 2) evidence known to the government at the time of instituting the forfeiture proceeding; or 3) the government may rely on evidence acquired after the seizure and commencement of the civil action to establish the forfeitability of the property.

This Court has never addressed this issue as to at what point in the forfeiture proceeding the government must prove the probable cause to institute the forfeiture action. The Circuit Courts of Appeal have split into three distinct interpretations of §1615.

9th Circuit Court of Appeals

The 9th Circuit Court of Appeals has long held "the government must have had probable cause at the time of seizure (emphasis added) to satisfy their §1615 burden." United States v. One 1985 Cadillac Seville, 866 F. 2d 1142, 1146 (1989); accord, United States v. Dickerson, 849 F. 2d 443, 445-46 (9th Cir. 1988).

The 1st, 5th and 8th Circuit Court's of Appeals have all held that the government may use evidence obtained after seizure, but before instituting a forfeiture action to establish probable cause under 19 U.S.C. §1615.

1st Circuit Court of Appeals

Here, the district court did not access whether the government had probable cause to institute the proceedings. Rather, it improperly focused its inquiry on whether probable cause existed on the date of the probable cause hearing itself. . .

. . .Under Section 1615, the government has a preliminary burden to show that it has probable cause to institute the forfeiture proceeding. United States v. Parcels of Property, 9 F. 3d 1000, 1003-04 (1993)

8th and 5th Circuit Court's of Appeals

Evidence to support the probable cause determination includes not only evidence obtained before the seizure of the property subject to forfeiture but also evidence obtained up until the point at which the government institutes forfeiture proceedings. United States v. $91,960.00, 897 F.2d 1457, 1462 (8th Cir.

1990) [accord, United States v. Monkey, 735 F. 2d 1007, 1011(5th Cir. 1984)]

The 2nd and 6th Circuit Court's of Appeals differ from the 9th; 1st, 8th, and 5th Circuits in that they allow evidence acquired after the commencement of the forfeiture proceeding to be used to determine probable cause.

2nd Circuit Court of Appeals

The government need not demonstrate probable cause until the forfeiture trial. (Internal quotations and cite omitted). . . Once a forfeiture proceeding is brought, if further evidence is legally obtained to justify the government's belief, there is no persuasive reason to bar its use. United States v. Property at 4492 S. Livonia Road, Livonia, 889 F. 2d 1258, 1268 (1989).

6th Circuit Court of Appeals

The district court, holding that probable cause must be measured at the time of the seizure, did not consider evidence developed after the airport encounter. While that approach has been adopted by at least one other District Court, see United States v. All Monies in Account No. 29-0101-62, 746 F. Supp. 1441, 1444 (D. Haw. 1990), we adopt the approach taken by the Second Circuit and hold that a district court must access probable cause at the time of the forfeiture hearing. United States v. $67,220.00 in U.S. Currency, 957 F. 2d 280, 284 (1992).

Congress has attempted to address this circuit conflict in the CAFRA of 2000, but it falls short of adequately resolving the conflict. The new civil forfeiture

proceedings are codified in 18 U.S.C. §983. Section 983 fails to address under what burden of proof the government must show in order to seize and to institute a civil forfeiture proceeding.

Title 18 U.S.C. §983 entitled General Rules for Civil Forfeiture Proceedings fails to state the burden of proof needed for the government to seize and/or institute a civil forfeiture proceedings. 18 U.S.C. §983(i)(2)(A) specifically excludes "any provision of law codified in Title 19" from being applicable to the civil forfeiture proceedings. Therefore, 19 U.S.C. §1615 is no longer applicable.

Title 18 U.S.C. §983(c) Burden of Proof - outlines the change in the trial burden of proof from probable cause to by a preponderance of the evidence. The code section fails to address what, if any, burden of proof the government must show to seize or institute a forfeiture action. Section 983(c)(2) does state "the Government may use evidence gathered after the filing of a complaint for forfeiture to establish, by a preponderance of the evidence, that property is subject to forfeiture." Furthermore, §983(a)(3)(D) states that "No complaint may be dismissed on the ground that the Government did not have adequate evidence at the time the complaint was filed to establish the forfeitability of the property." But, this does not address the burden of proof needed by the government to 1) seize the property, or 2) to institute the forfeiture proceeding. Title 21 U.S.C. §§881(b) and Title 18 U.S.C. 981(b) failed to outline what burden of proof the government must show to seize the property or institute the forfeiture proceeding.

The CAFRA of 2000 allows the government to "start a forfeiture proceeding in bad faith with wild

allegations based on the hope that something will turn up to justify its suit," which the 2nd Circuit warned against in Livonia, *Supra* at 1268. The CAFRA of 2000 does not solve the circuit conflicts outlined above because Congress failed to directly address what burden of proof the government must show at l) the time of seizure or 2) at the time of filing of the civil action.

The government in the instant case seized the Defendant automobiles and instituted this civil action without evidence to satisfy its burden of proof of probable cause of the forfeitability of the Defendant automobiles. The evidence used by the government was after-acquired evidence. As to Defendant Jaguar, the government alleged in the Complaint for Forfeiture that Sam Carroll purchased the Jaguar with drug proceeds, therefore making the Defendant Jaguar forfeitable. In the government's motion for summary judgment, the government alleged that Mr. Carroll purchased the Jaguar in Alabama for $1,500.00 with non-drug proceeds and "fixed-up" the Jaguar with drug proceeds, which was evidence acquired by the government after the filing of the Complaint for Forfeiture. The search warrant affidavit to seize the Defendant automobiles coincided with the Complaint for Forfeiture by stating that the Defendant Jaguar was purchased with drug proceeds. The pleadings without question showed that the evidence relied upon by the government to show probable cause for the forfeitability of the Jaguar was after-acquired evidence from both the date of seizure and the filing of the Complaint for Forfeiture.

The government's theory at trial that Petitioner was not the owner of the Defendant Mercedes because the Petitioner sold it to Mr. Carroll in exchange for a fur coat that was purchased by Mr. Carroll with drug

proceeds was definitely after acquired evidence. This theory was not within any of the government's preseizure pleadings nor in any of the government's pretrial pleadings. Even though the district court rejected the government's theory of probable cause to forfeit the Defendant Mercedes, the district court allowed the case to go to the jury to determine the Petitioner's standing, which is also a fact of law that should have been determined by the court.

The seizure of personal property for forfeiture without probable cause at the time of seizure or at the time of filing the Complaint for Forfeiture as required by 19 U.S.C. §1615 and the seizure of the personal property for forfeiture under the CAFRA of 2000 without any standard of proof is unconstitutional under the due process clause of the Fifth Amendment. This issue is ripe to be addressed by this Court. The government has used and misused the forfeiture laws in the war on drugs. This is why Congress reformed the law in 2000.

> Most significantly, as its title implies--Civil Asset Forfeiture **Reform** Act - the legislation - is primarily remedial in nature. It is specifically designed to rectify an unfairness to the individual vis-a-vis the government. It corrects an aberration that existed previously by leveling the playing field between the government and persons whose property has been seized. . . The legislation corrects a provision in the law that had been criticized repeatedly by the courts and legal commentators. United States v. Real Property in Section 9, Town 29 North, 241 F. 3d 796,799 (6th Cir. 2001).

Petitioner urges this Court to decide what standard of proof the government is required to show to seize and to institute an action in a civil forfeiture action and at what time in point must the government possess this evidence.

CONCLUSION

For the reasons set forth above, the petition for a writ of certiorari should be granted.

Respectfully submitted,

Alvin L. Kendall
Reg. No. 48526-019
Coleman Low
P.O. Box 1029
Coleman, FL 33521

APPENDIX

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 00-12161

D.C. Docket No. 97-01848-CV-JOF-1

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ONE 1989 MERCEDES BENZ 260E,
VIN WDBEA26DXKA951990,

Defendant,

versus

ALVIN L. KENDALL,

Claimant-Appellant.

Appeal from the United States District Court for the
Northern District of Georgia

(February 4, 2002)

Before BARKETT, HULL, and KRAVITCH, Circuit Judges.

PER CURIAM:

AFFIRMED. See 11th Cir. R. 36-1.1

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1 11th Cir. R. 36-1 provides:
When the court determines that any of the following circumstances exist:

(a) judgment of the district court is based on findings of fact that are not clearly erroneous;
(b) the evidence in support of a jury verdict is sufficient;
(c) the order of an administrative agency is supported by substantial evidence on the record as a whole;
(d) summary judgment, directed verdict, or judgment on the pleadings is supported by the record;
(e) judgment has been entered without a reversible error of law;

and an opinion would have no precedential value, the judgment or order may be affirmed or enforced without opinion.

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 00-12161

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ONE 1989 MERCEDES BENZ 260E,
VIN WDBEA26DXKA951990,

Defendant,

versus

ALVIN L. KENDALL,

Claimant-Appellant.

On Appeal from the United States District Court for the Northern District of Florida

---

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

BEFORE: BARKETT, HULL and KRAVITCH, Circuit Judges

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

/s/ Phyllis Kravitch
UNITED STATES CIRCUIT JUDGE

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 00-12161

District Court Docket No.
97-01848-CV-JOF-1

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ONE 1989 MERCEDES BENZ 260E,
VIN WDBEA26DXKA951990,

Defendant,

versus

ALVIN L. KENDALL,

Claimant-Appellant.

Appeal from the United States District Court
for the Northern District of Georgia

JUDGMENT

It is hereby ordered, adjudged, and decreed that the attached 11th Cir. R. 36-1 affirmance without opinion included herein by reference, is entered as the judgment of this Court.

Entered: February 4, 2002
For the Court: Thomas K. Kahn, Clerk
By: Eggleston, Nataki

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

UNITED STATES OF AMERICA,
Plaintiff,

V.

JUDGMENT IN A CIVIL CASE

ONE 1989 MERCEDES BENZ 260E, VIN WDBEA26DXKA951990, ET. AL.
Defendants.

CASE NUMBER: 1:97-CV-1848-JOF

☐ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☐ **Decision by Court.** This section came to trial before the Court. The issues have been tried and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

1. Final Judgment of Forfeiture is entered against the Defendant Jaguar and in favor of the United States.

2. The United States shall dispose of the Defendant Jaguar in according to law.

3. That Alvin Kendall failed to meet his burden of proving that he was the owner of the Defendant Mercedes, and that the $5,800.00 from the auction of the Defendant Mercedes shall be applied to the $450,000.00 Forfeiture Judgment against Sam Carroll in Criminal Case No. 1:96-CR-451.

4. This matter is now closed.

March 7, 2000
Date

Luther D. Thomas
Clerk

/s/
(By) Deputy Clerk)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	
	:	CIVIL ACTION NO.
v.	:	
	:	1:97-CV-1848-JOF
ONE 1989 MERCEDES BENZ 260E, VIN WDBEA26DXKA95 1990, ET AL.,	:	
	:	
Defendant.	:	

FINAL ORDER AND JUDGMENT

Plaintiff the United States of America brought this forfeiture action against the Defendant Vehicles, one 1989 Mercedes Benz 260E VIN WDBEA26DXIDA951990 and one 1961 Jaguar MK2 VIN P212601BW, pursuant to 21 U.S.C. § 881. Claimant Alvin Kendall filed claims to both of the Defendant Vehicles. During the pendency of the litigation, this Court granted Plaintiff's Motion for Interlocutory Sale, and the Defendant Vehicles were thus sold at auction. The Defendant Mercedes sold at auction for $5,800.00. The Defendant Jaguar sold at auction for $7,000.00.

By Order dated August 3, 1999, the Court granted Plaintiff Is Motion for Summary Judgment against the Claimant with respect to the Defendant Jaguar and ordered that the Defendant Jaguar be forfeited to the

United States.

On January 24, 2000, the matter of the 1989 Mercedes Benz came before the Court and a jury for trial. On January 26, 2000, the jury returned a Special Verdict finding that the Claimant had failed to prove by a preponderance of the evidence that he -was the owner of the Defendant Mercedes.

The Court takes judicial notice that in United States v. Sam Carroll, Criminal Action No. 1:96-CP-451, the Court entered a Final Order and Judgment of Forfeiture against Sam Carroll in the amount of $450,000.00. Accordingly, the Court orders that the $5,800.00 realized from the auction of the Defendant Mercedes be applied toward the $450,000.00 Forfeiture Judgment against Mr. Carroll.

It is therefore ORDERED, ADJUDGED AND DECREED:

1. that a forfeiture judgment against the Defendant Jaguar is hereby entered in favor of the United States; and

2. that Alvin Kendall failed to meet his burden of proving that he was the owner of the Defendant Mercedes, and that the $5,800.00 realized from the auction of the Defendant Mercedes be applied to the $450,000.00 Forfeiture Judgment against Sam Carroll in Case No. 1:96-CR-451.

So ordered this _____ day of _____, 2000.

_____
THE HONORABLE J. OWEN FORRESTER
UNITED STATES DISTRICT JUDGE

Presented by:

/s/ Carol M. Kayser
Carol M. Kayser
Assistant U.S. Attorney
(Georgia Bar No. 409355)

1800 United States Courthouse
75 Spring Street, S.W.
Atlanta, Georgia 30335
(404) 581-6285

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	
	:	CIVIL ACTION NO.
v.	:	
	:	1:97-CV-1848-JOF
ONE 1989 MERCEDES BENZ 260E, VIN WDBEA26DXKA95 1990, ET AL.,	:	
	:	
	:	

Defendant.

VERDICT

WE, THE JURY, FIND THAT:

1) The claimant proved by a preponderance of the evidence that he is the owner- of the Defendant Mercedes Benz.

Yes_____

No__√__

(IF THE ANSWER TO THIS QUESTION IS NO, STOP AND RETURN YOUR VERDICT).

2) That the Government proved with reasonably reliable information that the car was purchased with the proceeds of illegal drug transactions.

Yes_____

No_____

This the 26th day of January 2000.

/s/_____
FOREPERSON

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	
	:	CIVIL ACTION NO.
v.	:	
	:	1:97-CV-1848-JOF
ONE 1989 MERCEDES BENZ 260E, VIN WDBEA26DXKA95 1990;	:	
	:	
and	:	
	:	
ONE 1961 JAGUAR MK2, VIN P212601BW	:	
	:	
Defendants.	:	

COMPLAINT FOR FORFEITURE

The United States of America, plaintiff in this matter, files this Complaint for Forfeiture of one 1989 Mercedes Benz 260E, VIN WDBEA26DXKA951990 and One 1961 Jaguar MK2, VIN P212601BW, hereinafter referred to as the defendant vehicles, and shows the Court the following in support of this complaint:

1.

This Court has jurisdiction over the claim by virtue of 28 U.S.C. §§ 1345 and 1355.

2.

The defendant vehicles are registered in the name of Alvin L. Kendall. Both vehicles were seized on or about January 29, 1997 -- the defendant 1989 Mercedes Benz from Sam Carroll and the defendant 1961 Jaguar from Carroll's close associate, Kendall. Both vehicles are located within the Atlanta Division of this Court.

3.

During 1992, Anthony Gage delivered large amounts of cocaine from Jesus Cortes, of Houston, Texas, to Carroll in Atlanta, Georgia.

4.

In 1993, after Gage went to prison, Carroll began purchasing large amounts of cocaine directly from Cortes, who would have female couriers transport the cocaine from Texas to Atlanta.

5.

In March 1993, April 1993, May 1993, and June 1993, female drug couriers traveled from Houston, Texas to Atlanta, Georgia and made deliveries from Cortes to Carroll.

6.

On or about August 4, 1993, Philip Turman was arrested in Texas with approximately sixteen kilograms of cocaine that he was transporting from Cortes to Carroll in Atlanta.

7.

During this time period, Carroll had no legitimate source of employment, and Carroll has not filed tax returns for the years 1991, 1992, 1993 and 1994.

8.

Carroll has used the proceeds of his drug distribution to purchase and obtain numerous luxury vehicles, including the defendant vehicles. Some of these vehicles, including the defendant vehicles, are registered to Carroll's close associates in an effort to avoid the detection and seizure of those -vehicles by law enforcement agents.

Defendant 1989 Mercedes Benz 260E

9.

On or about July 25, 1995, Carroll's wife, Joan Carroll, was observed driving the defendant 1989 Mercedes Benz to a dry cleaner's from Carroll's residence at 4951 Panola Mill Drive Lithonia, Georgia.

10.

On June 2, 1996, the defendant 1989 Mercedes Benz was observed at Carroll's 4951 Panola Mill Drive

residence.

11.

In January of 1997, the defendant 1989 Mercedes Benz was observed parked in front of Browz, Inc., a business owned by Carroll's wife, Joan.

12.

Although the defendant 1989 Mercedes Benz is registered to Alvin L. Kendall, 130 North Hill Street, Griffin, Georgia, Kendall executed a bill of sale dated May 31, 1995, transferring this defendant vehicle to Carroll's wife, Joan.

Defendant 1961 Jaguar MK2

13.

In the early 1990s, Carroll purchased the defendant 1961 Jaguar -for approximately $1,500.00 in Birmingham, Alabama.. Carroll then had the vehicle extensively restored at Classic Cars.

14.

On or about June 6, 1994, the defendant 1961 Jaguar was observed in the driveway of Carroll's 4951 Panola Mill Drive residence.

15.

The defendant 1961 Jaguar was observed in the garage at Carroll's 4951 Panola Mill Drive residence on June 30, 1994. A search warrant was executed at this

residence on the next day, July 1, 1994, but this dendant vehicle had been moved during the preceding night. Agents executing the search did, however, find both an owner's manual and a copy of a repair bill for the defendant 1961 Jaguar in Carroll's residence.

16.

In 1995, Carroll was observed with the defendant 1961 Jaguar at a car wash located on Covington Highway.

17.

At the time of its January 29, 1997 seizure, Kendall had been keeping the defendant 1961 Jaguar on Carroll's behalf, to conceal it from detection and seizure by law enforcement agents. Nonetheless, Carroll still owns this defendant vehicle and never sold nor gave it to Kendall.

18.

Based upon the foregoing, the United States has probable cause to believe that the defendant vehicles were purchased with proceeds traceable to the sale of controlled substances within the meaning of Title 21, United States Code § 881(a)(6).

19.

The defendant vehicles are subject to forfeiture under the provisions of 21 U.S.C. § 881(a)(6).

WHEREFORE, the United States prays:

(1) that notice issue according to the normal procedure of this Court citing all persons having an interest in the above-described defendant vehicles to appear on the return day of said process by filing a claim within ten (10) days of the final publication of the notice and an answer within twenty (20) days thereafter pursuant to Rule C(6), Supplemental Rules for Certain Admiralty and Maritime Claims;

(2) that Warrants in rem issue to the United States Marshal for the Northern District of Georgia commanding him to arrest the defendant vehicles;

(3) that judgment of Forfeiture be decreed against the defendant vehicles;

(4) that upon Final Decree of Forfeiture, the United States Marshal dispose of the defendant vehicles and cost bonds in accordance with law; and

(5) for costs and for such other and further relief to which the United States may be justly entitled.

Respectfully submitted,

KENT B. ALEXANDER
UNITED-STATES ATTORNEY

/s/
DAHIL D. GOSS
ASSISTANT U.S. ATTORNEY
GEORGIA BAR NO. 302905

1800 U.S. COURTHOUSE
75 SPRING STREET, S.W.
ATLANTA, GEORGIA 30335
(404) 581-6245

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	
	:	CIVIL ACTION NO.
v.	:	
	:	1:97-CV-1848-JOF
ONE 1989 MERCEDES BENZ 260E, VIN WDBEA26DXKA95 1990;	:	
	:	
and	:	
	:	
ONE 1961 JAGUAR MK2, VIN P212601BW	:	
	:	
Defendants.	:	

WARRANT OF ARREST
OF PROPERTY AND NOTICE

TO: UNITED STATES MARSHAL, NORTHERN DISTRICT OF GEORGIA

GREETINGS:

ONE 1989 MERCEDES BENZ 260E
VIN WDBEA26DXKA951990

YOU ARE HEREBY COMMANDED to arrest and take into custody, until further Order of this Court, the above-described property. Due notice shall be made upon all known potential claimants by any means of

service permitted under the Federal Rules of Civil Procedure and upon all persons having or claiming any right, title, or interest to said property by publication in a newspaper of general circulation in the Northern District of Georgia, i.e., The Atlanta Journal-Constitution, for three successive weeks.

Claimants to the above-described property shall file their claim with the Clerk of the Court and serve a copy upon the United States Attorney, Suite 1800, United States Courthouse, 75 Spring Street, Street, S.W., Atlanta, Georgia 30335, within ten (10) days after process has been executed or within such additional time as may be allowed by the Court. Answers to the Complaint shall be served within twenty (20) days after the filing of a claim. Rule C(6) of the Supplemental Rules for Certain Admiralty and Maritime Claims, Federal Rules of Civil Procedure.

This 26th day of June, 1997.

LUTHER D. THOMAS, CLERK
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

By: /s/ Elaine P. Moore
Deputy Clerk

Executed this 8th day of July, 1997.

/s/
DEPUTY U.S. MARSHAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	
	:	CIVIL ACTION NO.
v.	:	
	:	1:97-CV-1848-JOF
ONE 1989 MERCEDES BENZ 260E, VIN WDBEA26DXKA95 1990;	:	
	:	
and	:	
	:	
ONE 1961 JAGUAR MK2, VIN P212601BW	:	
	:	
Defendants.	:	

WARRANT OF ARREST
OF PROPERTY AND NOTICE

TO: UNITED STATES MARSHAL, NORTHERN DISTRICT OF GEORGIA

GREETINGS:

ONE 1961 JAGUAR MK2, VIN P212601BW

YOU ARE HEREBY COMMANDED to arrest and take into custody, until further Order of this Court, the above-described property. Due notice shall be made upon all known potential claimants by any means of service permitted under the Federal Rules of Civil

Procedure and upon all persons having or claiming any right, title, or interest to said property by publication in a newspaper of general circulation in the Northern District of Georgia, i.e., The Atlanta Journal-Constitution, for three successive weeks.

Claimants to the above-described property shall file their claim with the Clerk of the Court and serve a copy upon the United States Attorney, Suite 1800, United States Courthouse, 75 Spring Street, Street, S.W., Atlanta, Georgia 30335, within ten (10) days after process has been executed or within such additional time as may be allowed by the Court. Answers to the Complaint shall be served within twenty (20) days after the filing of a claim. Rule C(6) of the Supplemental Rules for Certain Admiralty and Maritime Claims, Federal Rules of Civil Procedure.

This 26th day of June, 1997.

LUTHER D. THOMAS, CLERK
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

By: /s/ Elaine P. Moore
Deputy Clerk

Executed this 8th day of July, 1997.

/s/
DEPUTY U.S. MARSHAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	
	:	CIVIL ACTION NO.
v.	:	
	:	1:97-CV-1848-JOF
ONE 1989 MERCEDES BENZ 260E, VIN WDBEA26DXKA95 1990;	:	
	:	
and	:	
	:	
ONE 1961 JAGUAR MK2, VIN P212601BW	:	
	:	
Defendants.	:	

ANSWER OF CLAIMANT ALVIN L. KENDALL

COMES NOW Claimant Alvin L. Kendall and files, subject to his motion to dismiss filed contemporaneously with this pleading, the following as his answer to the Complaint filed by the United States of America against the above owner of the above referenced property:

FIRST DEFENSE

The Government's Complaint fails to state a claim for which relief can be granted.

SECOND DEFENSE

The relief sought in the Government's Complaint is barred because Claimant was not given notice of the seizure of his property at the earliest practicable opportunity as required under 21 U.S.C. § 888(b) and 21 C.F.R. § 1316.99.

THIRD DEFENSE

The relief sought in the Government's Complaint is barred because there is no nexus between the property seized and the commission of any drug related offenses in violation of 21 U.S.C. § 881.

FOURTH DEFENSE

For specific answer to the numbered paragraphs of the Government's Complaint, Claimant shows the following:

1.

Claimant admits the allegation of Paragraph 1 of the Government's Complaint.

2.

Claimant admits that the defendant vehicles are registered in his name and that the vehicles are located within the Atlanta Division of this Court. Further responding Claimant shows that Sam Carroll is not a close associate of Claimant but merely a former client.

3.

Claimant is without knowledge of information sufficient to form a belief as to the truth of the

allegations contained in Paragraph 3 of the Government's Complaint.

4.

Claimant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 of the Government's Complaint.

5.

Claimant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 5 of the Government's Complaint.

6.

Claimant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6 of the Government's Complaint.

7.

Claimant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 7 of the Government's Complaint.

8.

Claimant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 8 of the

Government's Complaint.

9.

Claimant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 9 of the Government's Complaint.

10.

Claimant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 10 of the Government's Complaint.

11.

Claimant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 11 of the Government's Complaint.

12.

Claimant admits that the defendant 1989 Mercedes Benz is registered in his name. Further responding, Claimant shows that he is still the sole owner of said vehicle and did not transfer said vehicle to Joan Carroll.

13.

Claimant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 13 of the

Government's Complaint.

14.

Claimant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 14 of the Government's Complaint.

15.

Claimant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 15 of the Government's Complaint.

16.

Claimant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 16 of the Government's Complaint.

17.

Claimant denies the allegations of Paragraph 17 of the Government's Complaint. Further responding, Claimant shows that he is the sole owner of this defendant vehicle as indicated by the certificate of title to said vehicle which is in Claimant's name.

18.

Claimant denies the allegations of Paragraph 18 of the Government's Complaint. Further responding, Claimant shows that 21 U.S.C. § 881(a)(6) is inapplicable

in that there is no nexus between the defendant vehicles which are the subject of this lawsuit and any drug related activity.

19.

Claimant herewith additionally denies each and every allegation and claim of the Government's Complaint not heretofore specifically answered.

WHEREFORE, Claimant ALVIN L. KENDALL, having fully answered the Government's Complaint, respectfully requests this Honorable Court to grant the following relief:

1. That the Complaint for forfeiture be dismissed in its entirety, with prejudice.

2. A trial by jury.

3. That all costs and attorney's fees be assessed against the Government.

4. Any additional and further relief that this Court deems just and proper.

Respectfully submitted,

/s/ George O. Lawson, Jr.
GEORGE O. LAWSON, JR.
Attorney for Claimant
Alvin L. Kendall
Ga. Bar No. 440200

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that I have served the opposing counsel with a copy of the within and foregoing "ANSWER" in the above styled-action by depositing a true copy of same in the United States mail with proper postage affixed and addressed as follows:

DAHIL D. GOSS
ASSISTANT U.S. ATTORNEY
1800 U.S. COURTHOUSE
75 SPRING STREET, S.W.
ATLANTA, GEORGIA 30335
(404) 581-6245

This 22nd day of August, 1997.

/s/ George O. Lawson, Jr.
GEORGE O. LAWSON, JR.
Attorney for Claimant
Alvin L. Kendall
STATE BAR NO. 440200

APPENDIX I

STATUTES AND CONSTITUTION PROVISIONS

5th Amendment of the United States Constitution

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

8th Amendment of the United States Constitution

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Title 8 U.S.C. §1431

(a) A child born outside of the United States automatically becomes a citizen of the United States when all of the following conditions have been fulfilled:

(1) At least one parent of the child is a citizen of the United Sates, whether by birth or naturalization.

(2) The child id under the age of eighteen years.

(3) The child is residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence.

(b) Subsection (a) shall apply to a child adopted by a United States citizen parent if the child satisfies the requirements applicable to adopted children under section 1101(b)(1) of this title.

Title 18 U.S.C. §981

(a) (1) The following property is subject to forfeiture to the United States:

(A) Any property, real or personal, involved in a transaction or attempted transaction in violation of section 3513(a) or 5324(a) of title 31, or of section 1956 or 1957 of this title, or any property traceable to such property. However, on property shall be seized or forfeited in the case of a violation of section 5313(a) of title 31 by a domestic financial institution examined by a federal bank supervisory agency or a financial institution regulated by the Securities and Exchange Commission or a partner, director, or employee thereof.

(B) Any property, real or personal, within the jurisdiction of the United States, constituting, derived from, or traceable to, any proceeds obtained directly or indirectly from an offense against a foreign nation involving the manufacture, importation, sale, or distribution of a controlled substance (as such term is defined for

the purposes of the controlled Substances Act), within whose jurisdiction such offense would be punishable by death or imprisonment for a term exceeding one year and which would be punishable under the laws of the United States by imprisonment for a term exceeding one year if such act or activity constituting the offense against the foreign nation had occurred within the jurisdiction of the United States.

(C) Any property, real or personal, which constitutes or is derived from proceeds traceable to a violation of section 215, 471, 472, 473, 474, 476, 477, 478, 479, 480, 481, 485, 486, 487, 488, 501, 502, 510, 542, 545, 656, 657, 842, 844, 1005, 1006, 1007, 1014, 1028, 1029, 1030, 1032, 94 1344 of this title or any offense constituting "specified unlawful activity" (as defined in section 1956(c)(7) of this title), or a conspiracy to commit such offense.

(D) Any property, real or personal, which represents or is traceable to the gross receipts obtained, directly or indirectly, from a violation of—

(i) section 666(a)(1) relating to Federal program fraud);

(ii) section 1001 (relating to fraud and false statements);

(iii) section 1031 (relating to major fraud against the United States);

(iv) section 1032 (relating to

concealment of assets from conservator or receiver of insured financial institution);

(v) section 1341 (relating to mail fraud); or

(vi) section 1343 (relating to wire fraud),

if such violation relates to the sale of assets acquired or held by the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, as conservator or receiver for a financial institution appointed by the Office of the Comptroller of the Currency or the Office of Thrift Supervision or the National Credit Union Administration, as conservator or liquidating agent for a financial institution.

(E) With respect to an offense listed in subsection (a)(1)(D) committed for the purpose of execution or attempting to execute any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent statements, pretenses, representations or promises, the gross receipts of such an offense shall include all property, real or personal, tangible or intangible, which thereby is obtained, directly or indirectly.

(F) Any property, real or personal, which represents or is traceable to the gross proceeds obtained, directly or indirectly, from a violation of—

(i) section 511 (altering or removing motor vehicle identification numbers);

(ii) section 553 (importing or exporting stolen motor vehicles);

(iii) section 2119 (armed robbery of automobiles);

(iv) section 2313 (transporting stolen motor vehicles in interstate commerce); or

(v) section 2313 (possessing or selling a stolen motor vehicle that has moved in interstate commerce).

(2) For purposes of paragraph (1), the term "proceeds" is defined as follows:

(A) In cases involving illegal goods, illegal services, unlawful activities, and telemarketing and health care fraud schemes, the term "proceeds" means property of any kind obtained directly or indirectly, as the result of the commission of the offense giving rise to forfeiture, and any property traceable thereto, and is not limited to the net gain or profit realized from the offense.

(B) In cases involving lawful goods or lawful services that are sold or provided in an illegal manner, the term "proceeds" means the amount of money acquired through the illegal transactions resulting in the forfeiture, less the direct costs incurred in providing the goods or services. The claimant shall have the burden of proof with respect to the issue of direct costs. The

direct costs shall not include any part of the overhead expenses of the entity providing the goods or services, or any part of the income taxes paid by the entity.

(C) In cases involving fraud in the process of obtaining a loan or extension of credit, the court shall allow the claimant a deduction from the forfeiture to the extent that the loan was repaid, or the debt was satisfied, without any financial loss to the victim.

(b) (1) Except as provided in section 985, any property subject to forfeiture to the United States under subsection (a) may be seized by the Attorney General and, in the case of property involved in a violation investigated by the Secretary of the Treasury or the United States Postal Service, the property may also be seized by the Secretary of the Treasury or the Postal Service, respectively.

(2) Seizures pursuant to this section shall be made pursuant to a warrant obtained in the same manner as provided for a search warrant under the Federal Rules of Criminal Procedure, except that a seizure may be made without a warrant if—

(A) a complaint for forfeiture has been filed in the United States district court and the court issued an arrest warrant in rem pursuant to the Supplemental Rules for Certain Admiralty and Maritime Claims;

(B) there is probably cause to believe that the property is subject to forfeiture

and—

(i) the seizure is made pursuant to a lawful arrest or search; or

(ii) another exception to the Fourth Amendment warrant requirement would apply; or

(C) the property was lawfully seized by a State or local law enforcement agency and transferred to a Federal agency.

(3) Notwithstanding the provisions of rule 41(a) of the Federal Rules of Criminal Procedure, a seizure warrant may be issued pursuant to this subsection by a judicial officer in any district in which a forfeiture action against the property may be filed under section 1355(b) of title 28, and may be executed in any district in which the property is found, or transmitted to the central authority of any foreign state for service in accordance with any treaty or other international agreement. Any motion for the return of property seized under this section shall be filed in the district court in which the seizure warrant was issued or in the district court for the district in which the property was seized.

(4) (A) If any person is arrested or charged in a foreign country in connection with an offense that would give rise to the forfeiture of property in the United States under this section or under the Controlled Substances Act, the Attorney General may apply to any Federal judge or magistrate judge in the district in which the

property is located for an ex parte order restraining the property subject to forfeiture for not more than 30 days, except that the time may be extended for good cause shown at a hearing conducted in the manner provided in rule 43(e) of the Federal Rules of Civil Procedure.

(B) The application for the restraining order shall set forth the nature and circumstances of the foreign charges and the basis for belief that the person arrested or charged has property in the United States that would be subject to forfeiture, and shall contain a statement that the restraining order is needed to preserve the availability of property for such time as is necessary to receive evidence from the foreign country or elsewhere in support of probably cause for the seizure of the property under this subsection.

(c) Property taken or detained under this section shall not be repleviable, but shall be deemed to be in the custody of the Attorney General, the Secretary of the Treasury, or the Postal Service, as the case may be, subject only to the orders and decrees of the court or the official having jurisdiction thereof. Whenever property is seized under this subsection, the Attorney General, the Secretary of the Treasury, or the Postal Service, as the case may be, may—

(1) place the property under seal;

(2) remove the property to a place designated by him; or

(3) require that the General Services

Administration take custody of the property and remove it, if practicable, to an appropriate location for disposition in accordance with law.

(d) For purposes of this section, the provisions of the customs laws relating to the seizure, summary and judicial forfeiture, condemnation of property for violation of the customs laws, the disposition of such property or the proceeds from the sale of this section, the remission or mitigation of such forfeitures, and the compromise of claims (19 U.S.C. 1602 et seq.), insofar as they are applicable and not inconsistent with the provisions of this section, shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under this section, except that such duties as are imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws shall be performed with respect to seizures and forfeitures of property under this section by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General, the Secretary of the Treasury, or the Postal Service, as the case may be. The Attorney General shall have sole responsibility for disposing of petitions for remission or mitigation with respect to property involved in a judicial forfeiture proceeding.

(e) Notwithstanding any other provision of the law, except section 3 of the Anti Drug Abuse Act of 1986, the Attorney General, the Secretary of the Treasury, or the Postal Service, as the case may be, is authorized to retain property forfeited pursuant to this section or to transfer such property on such terms and conditions as he may determine—

(1) to any other Federal agency;

(2) to any State or local law enforcement agency which participated directly in any of the acts which led to the seizure or forfeiture of the property;

(3) in the case of property referred to in subsection (a)(1)(C), to any Federal financial institution regulatory agency—

(A) to reimburse the agency for payments to claimants or creditors of the institution; and

(B) to reimburse the insurance fund of the agency for losses suffered by the fund as a result of the receivership or liquidation;

(4) in the case of property referred to in subsection (a)(1)(C), upon the order of the appropriate Federal financial institution regulatory agency, to the financial institution as restitution, with the value of the property so transferred to be set off against any amount later recovered by the financial institution as compensatory damages in any State or Federal proceeding;

(5) in the case of property referred to in subsection (a)(1)(C), to any Federal financial institution regulatory agency, to the extent of the agency's contribution of resources to, or expenses involved in, the seizure and forfeiture, and the investigation leading directly to the seizure and forfeiture, of such property;

(6) as restoration to any victim of the offense giving rise to the forfeiture, including, in the case of a money laundering offense, any offense constituting the underlying specified unlawful activity; or

(7) In the case of property referred to in subsection (a)(1)(D), to the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, or any other Federal financial institution regulatory agency (as defined in section 8(e)7(D) of the Federal Deposit Insurance Act).

The Attorney General, the Secretary of the Treasury, or the Postal Service, as the case may be, shall ensure the equitable transfer pursuant to paragraph (2) of any forfeited property to the appropriate State or local law enforcement agency so as to reflect generally the contribution of any such agency participating directly in any of the acts which led to the seizure or forfeiture of such property. A decision by the Attorney General, the Secretary of the Treasury, or the Postal Service pursuant to paragraph (2) shall not be subject to review. The United States shall not be liable in any action arising out of the use of any property the custody of which was transferred pursuant to this section to any non-Federal agency. The Attorney General, the Secretary of the Treasury, or the Postal Service may order the discontinuance of any forfeiture proceedings under this section in favor of the institution of forfeiture proceedings by State or local authorities under an appropriate State or local statute. After the filing of a complaint for forfeiture under this section, the Attorney General may seek dismissal of the complaint in favor of forfeiture proceedings under State or local law.

Whenever forfeiture proceedings are discontinued by the United States in favor of State or local proceedings, the United States may transfer custody and possession of the seized property to the appropriate State or local official immediately upon the initiation of the proper actions by such officials. Whenever forfeiture proceedings are discontinued by the United States in favor of State or local proceedings, notice shall be sent to all known interested parties advising them of the discontinuance or dismissal. The United States shall not be liable in any action arising out of the seizure, detention, and transfer of seized property to State or local officials. The United States shall not be liable in any action arising out of a transfer under paragraph (3), (4), or (5) of this subsection.

(f) All right, title, and interest in property described in subsection (a) of this section shall vest in the United States upon commission of the act giving rise to forfeiture under this section.

(g) (1) Upon the motion of the United States, the court shall stay the civil forfeiture proceeding if the court determines that civil discovery will adversely affect the ability of the Government to conduct a related criminal investigation or the prosecution of a related criminal case.

(2) Upon the motion of a claimant, the courst shall stay the civil forfeiture proceeding with respect to that claimant if the court determines that—

(A) the claimant is the subject of a related criminal investigation or case;

(B) the claimant has standing to assert a claim in the civil forfeiture proceeding; and

(C) continuation of the forfeiture proceeding will burden the right of the claimant against self-incrimination in the related investigation or case.

(3) With respect to the impact of civil discovery described in paragraphs (1) and (2), the court may determine that a stay is unnecessary if a protective order limiting discovery would protect the interest of one party without unfairly limiting the ability of the opposing party to pursue the civil case. In no case, however, shall the court impose a protective order as an alternative to a stay if the effect of such protective order would be to allow one party to pursue discovery while the other party is substantially unable to do so.

(4) In this subsection, the terms "related criminal case" and "related criminal investigation" mean an actual prosecution or investigation in progress at the time at which the request for the stay, or any subsequent motion to lift the stay is made. In determining whether a criminal case or investigation is "related" to a civil forfeiture proceeding, the court shall consider the degree of similarity between the parties, witnesses, facts, and circumstances involved in the two proceedings, without requiring an identity with respect to any one or more factors.

(5) In requesting a stay under paragraph (1), the Government may, in appropriate

cases, submit evidence ex parte in order to avoid disclosing any matter that may adversely affect an ongoing criminal investigation or pending criminal trial.

(6) Whenever a civil forfeiture proceeding is stayed pursuant to this subsection, the court shall enter any order necessary to preserve the value of the property or to protect the rights of lienholders or other persons with an interest in the property while the stay is in effect.

(7) A determination by the court that the claimant has standing to request a stay pursuant to paragraph (2) shall apply only to this subsection and shall not preclude the Government from objecting to the standing of the claimant by dispositive motion or at the time of trial.

(h) In addition to the venue provided for in section 1395 of title 28 or any other provision of law, in the case of property of a defendant charged with a violation that is the basis for forfeiture of the property under this section, a proceeding for forfeiture under this section may be brought in the judicial district in which the defendant owning such property is found or in the judicial district in which the criminal prosecution is brought.

(i) (1) Whenever property is civilly or criminally forfeited under this chapter, the Attorney General or the Secretary of the Treasury, as the case may be, may transfer the forfeited personal property or the proceeds of the sale of any forfeited personal or real property to any foreign country which participated directly or

indirectly in the seizure or forfeiture of the property, if such a transfer—

(A) has been agreed to by the Secretary of State;

(B) is authorized in an international agreement between the United States and the foreign country; and

(C) is made to a country which, if applicable, has been certified under section 481(h) of the Foreign Assistance Act of 1961.

A decision by the Attorney General or the Secretary of the Treasury pursuant to this paragraph shall not be subject to review. The foreign country shall, in the event of a transfer of property or proceeds of sale of property under this subsection, bear all expenses incurred by the United States in the seizure, maintenance, inventory, storage, forfeiture, and disposition of the property, and all transfer costs. The payment of all such expenses, and the transfer of assets pursuant to this paragraph, shall be upon such terms and conditions as the Attorney General or the Secretary of the Treasury may, in his discretion set.

(2) The provisions of this section shall not be construed as limiting or superseding any other authority of the United States to provide assistance to a foreign country in obtaining property related to a crime committed in the foreign country, including property which is sought as evidence of a crime committed in the foreign country.

(3) A certified order or judgment of forfeiture by a court of competent jurisdiction of a foreign country concerning property which is the subject of forfeiture under this section and was determined by such court to be the type of property described in subsection (a)(1)(B) of this section, and any certified recordings or transcripts of testimony taken in a foreign judicial proceeding concerning such order or judgment of forfeiture, shall be admissible in evidence in a proceeding brought pursuant to this section. Such certified order or judgment of forfeiture, when admitted into evidence, shall constitute probable cause that the property forfeited by such order or judgment of forfeiture is subject to forfeiture under this section and creates a rebuttable presumption of the forfeitability of such property under this section.

(4) A certified order or judgment of conviction by a court of competent jurisdiction of a foreign country concerning an unlawful drug activity which gives rise to forfeiture under this section and any certified recordings or transcripts of testimony taken in a foreign judicial proceeding concerning such order of judgment of conviction shall be admissible in evidence in a proceeding brought pursuant to this section. Such certified order or judgment of conviction, when admitted into evidence, creates a rebuttable presumption that the unlawful drug activity giving rise to forfeiture under this section has occurred.

(5) The provisions of paragraphs (3) and (4) of this subsection shall not be construed as limiting the admissibility of any evidence otherwise admissible, nor shall they limit the ability of the

United States to establish probable cause that property is subject to forfeiture by any evidence otherwise admissible.

(j) For purposes of this section—

(1) the term "Attorney General" means the Attorney General or his delegate; and

(2) the term "Secretary of the Treasury" means the Secretary of the Treasury or his delegate.

Title 18 U.S.C. §983

(a) Notice; claim; complaint.

(1)(A)(i) Except as provided in clauses (ii) through (v), in any nonjudicial civil forfeiture proceeding under a civil forfeiture statute, with respect to which the Government is required to send written notice to interested parties, such notice shall be sent in a manner to achieve proper notice as soon as practicable, and in no case more than 60 days after the date of the seizure.

(ii) No notice is required if, before the 60-day period expires, the Government files a civil judicial forfeiture action against the property and provides notice of that action as required by law.

(iii) If, before the 60-day period expires, the Government does not file a civil judicial forfeiture action, but does obtain a criminal indictment containing an allegation that

the property is subject to forfeiture, the Government shall either—

(I) send notice within the 60 days and continue the nonjudicial civil forfeiture proceeding under this section; or

(II) terminate the nonjudicial civil forfeiture proceeding, and take the steps necessary to preserve its right to maintain custody of the property as provided in the applicable criminal forfeiture statute.

(iv) In a case in which the property is seized by State or local law enforcement agency and turn over to a Federal law enforcement agency for the purpose of forfeiture under Federal law, notice shall be sent not more than 90 days after the date of seizure by the State or local law enforcement agency.

(v) If the identity or interest of a party is not determined until after the seizure or turnover but determined before a declaration of forfeiture is entered, notice shall be sent to each interested party not later than 60 days after the determination of the Government of the identity of the party or the party's interest.

(B) A supervisory official in the headquarters office of the seizing agency may extend the period for sending notice under subparagraph (A) for a period not to exceed 30 days (which period may not be further extended except by a court), if the official determines that the conditions in subparagraph (D) are present.

(C) Upon motion by the Government, a court may extend the period for sending notice under subparagraph (A) for a period not to exceed 60 days, which period may be further extended except by a court for 60-day periods, as necessary, if the court determines, based on a written certification of a supervisory official in the headquarters office of the seizing agency, that the conditions in subparagraph (D) are present.

(D) The period for sending notice under this paragraph may be extended only if there is reason to believe that notice may have an adverse result including –

(i) endangering the life or physical safety of an individual;

(ii) flight from prosecution;

(iii) destruction of or tampering with evidence;

(iv) intimidation of potential witnesses; or

(v) otherwise seriously jeopardizing an investigation or unduly delaying a trial.

(E) Each of the Federal seizing agencies conducting nonjudicial forfeitures under this section shall report periodically to the Committees on the Judiciary of the House of Representatives and the Senate the number of occasions when an extension of time is granted under

subparagraph (B).

(F) If the Government does not send notice of a seizure of property in accordance with subparagraph (A) to the person from whom the property was seized, and no extension of time is granted, the Government shall return the property to that person without prejudice to the right of the Government to commence a forfeiture proceeding at a later time. The Government shall not be required to return contraband or other property that the person from whom the property was seized may not legally possess.

(2)(A) Any person claiming property seized in a nonjudicial civil forfeiture proceeding under a civil forfeiture statute may file a claim with the appropriate official after the seizure.

(B) A claim under subparagraph (A) may be filed not later than the deadline set forth in a personal notice letter (which deadline may be not earlier than 35 days after the date the letter is mailed), except that if that letter is not received, then a claim may be filed not later than 30 days after the date of final publication of notice of seizure.

(C) A claim shall—

(i) identify the specific property being claimed;

(ii) state the claimant's interest in such property; and

(iii) be made under oath, subject to penalty of perjury.

(D) A claim need not be made in a any particular form. Each Federal agency conducting nonjudicial forfeitures under this section shall make claim forms generally available on request, which forms shall be written in easily understandable language.

(E) Any person may make a claim under subparagraph (A) without posting bond with respect to the property which is the subject of the claim.

(3)(A) Not later than 90 days after a claim has been filed, the Government shall file a complaint for forfeiture in the manner set forth in the Supplemental Rules for Certain Admiralty and Maritime Claims or return the property pending the filing of a complaint, except that a court in the district in which the complaint will be filed may extend the period for filing a complaint for good cause shown or upon agreement of the parties.

(B) If the Government does not—

(i) file a complaint for forfeiture or return the property, in accordance with subparagraph (A); or

(ii) before the time for filing a complaint has expired—

(I) obtain a criminal indictment containing an allegation that the

property is subject to forfeiture; and

(II) take the steps necessary to preserve its right to maintain custody of the property as provided in the applicable criminal forfeiture statute, the Government shall promptly release the property pursuant to regulations promulgated by the Attorney General, and may not take any further action to effect the civil forfeiture of such property in connection with the underlying offense.

(C) In lieu of, or in addition to, filing a civil forfeiture complaint, the Government may include a forfeiture allegation in a criminal indictment. If criminal forfeiture I the only forfeiture proceeding commenced by the Government, the Government's right to continued possession of the property shall be governed by the applicable criminal forfeiture statute.

(D) No complaint may be dismissed on the ground that the Government did not have adequate evidence at the time the complaint was filed to establish the forfeitability of the property.

(4)(A) In any case in which the Government files in the appropriate United States district court a complaint for forfeiture of property, any person claiming an interest in the seized property may file a claim asserting such person's interest in the property in the manner set forth in the Supplemental Rules for Certain Admiralty and Maritime Claims, except that such claim may be filed not later than 30 days after the date of service of the Government's complaint or, as applicable,

not later than 30 days after the date of final publication of notice of the filing of the complaint.

(B) A person asserting an interest in seized property, in accordance with subparagraph (A), shall file an answer to the Government's complaint for forfeiture not later than 20 days after the date of the filing of the claim.

(b) **Representation—**

(1) (A) If a person with standing to contest the forfeiture of property in a judicial civil forfeiture proceeding under a civil forfeiture statute is financially unable to obtain representation by counsel, and the person is represented by counsel appointed under section 3006A of this title in connection with a related criminal case, the court may authorize counsel to represent that person with respect to the claim.

(B) In determining whether to authorize counsel to represent a person under subparagraph (A), the court shall take into account such factors as—

(i) the person's standing to contest the forfeiture; and

(ii) whether the claim appears to be made in good faith.

(2) (A) If a person with standing to contest the forfeiture of property in a judicial civil forfeiture proceeding under a civil forfeiture statute